

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GARY LEWIS,

Plaintiff,

v.

MICHAEL MINEV,

Defendant.

Case No. 3:23-cv-00280-MMD-CSD

ORDER

Plaintiff Gary Lewis brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Northern Nevada Correctional Center. (ECF No. 1-2.) On January 9, 2024, this Court ordered Lewis to file an amended complaint by February 8, 2024. (ECF No. 3.) The Court warned Lewis that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 9.) That deadline expired and Lewis did not file an amended complaint, move for an extension, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition
2 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
4 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public's interest in expeditiously resolving this litigation
6 and the Court's interest in managing its docket, weigh in favor of dismissal of Lewis's
7 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
8 because a presumption of injury arises from the occurrence of unreasonable delay in filing
9 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
10 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can
13 be used to correct the party's failure that brought about the Court's need to consider
14 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
15 that considering less drastic alternatives *before* the party has disobeyed a court order
16 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
17 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
18 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
19 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
20 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
21 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
22 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
23 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
24 unless Lewis files an amended complaint, the only alternative is to enter a second order
25 setting another deadline. But the reality of repeating an ignored order is that it often only
26 delays the inevitable and squanders the Court's finite resources. The circumstances here
27 do not indicate that this case will be an exception: there is no hint that Lewis needs
28 additional time or evidence that he did not receive the Court's screening order. Setting

1 another deadline is not a meaningful alternative given these circumstances. So the fifth
2 factor favors dismissal.

3 Having thoroughly considered these dismissal factors, the Court finds that they
4 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
5 prejudice based on Lewis's failure to file an amended complaint in compliance with this
6 Court's January 9, 2024, order. The Clerk of Court is directed to enter judgment
7 accordingly and close this case. No other documents may be filed in this now-closed
8 case. If Lewis wishes to pursue his claims, he must file a complaint in a new case.

9 It is further ordered that Lewis's application to proceed *in forma pauperis* (ECF No.
10 1-1) is denied as moot.

11 DATED THIS 20th Day of February 2024.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE